IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 5TH DECEMBER 2007 / 14TH AGRAHAYANA 1929

CRP.No. 3 of 2004()

AGAINST THE ORDER DATED 23/10/2003 IN EP.135/2002 IN OS.179/1986 of MUNSIFF COURT, KOTTARAKKARA

.....

REVN. PETITIONER: DEFENDANT/JUDGMENT DEBTOR

GOPALAN SATHYASEELAN, VISWAPRABHA,
THALAVOORKONAM, EDAKKIDATHU MURI,
KAREEPRA VILLAGE.

BY ADV. SRI.K.K.JOHN

RESPONDENT: PLAINTIFF/DECREE HOLDER

MADHAVAN KALANADHAN,
KRISHNAVILASOM VEEDU, EDAVATTOM MURI,
PAVITHRESWARAM, REPRESENTED BY POWER OF
ATTORNEY HOLDER E.KI.BASU HARSHANIVAS,
KOLANNOOR MURI, EZHUKONE VILLAGE.

BY

SRI.VPK.PANICKER
SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)
SMT.SREELEKHA PUTHALATH
SRI.A.R.DILEEP
SRI.ABRAHAM GEORGE JACOB
SRI.S.GOWTHAM

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 05/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A.NO.21/2004 IN CRP.NO.3/2004

DISMISSED

5.12.2007. SD/= K.T.SANKARAN, JUDGE

/TRUE COPY/

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K.T. SANKARAN, J.

C.R.P.NO.3 OF 2004

Dated this the 5th day of December, 2007.

O R D E R

The judgment debtor in O.S.No.179 of 1986, on the file of the Court of the Munsiff of Kottarakkara is the revision petitioner. He challenges the order dated 23.10.2003 in E.P.No.135 of 2002 in O.S.No.179 of 1986, by which the court below found that the revision petitioner has to pay a balance amount of Rs.8,100/- and interest of Rs.2,025/-.

2. O.S.No.179 of 1986 was filed by the respondent herein against the petitioner for eviction. The respondent contended that the petitioner was his tenant in respect of a building. The suit was decreed on 20.7.1988. The revision petitioner challenged the judgment and decree of the trial court in appeal. The Appellate Court confirmed the judgment and decree of the trial court. The defendant in the suit carried the matter in S.A.No.953 of 1991. At the time when the Second Appeal came up for hearing, the area where the building is situated was notified under the Kerala Buildings (Lease and Rent

Control) Act (hereinafter referred to as `the Rent Control Act'). In view of the inclusion of the building in an area covered by the Rent Control Act, the landlord could get an order of eviction only by recourse to the provisions of the Rent Control Act. The Second Appeal was disposed of by judgment dated 1.3.1995, reported in **Gopalan** v. **Madhavan** (1995 (2) KLT 10). The question which arose in the Second Appeal was whether the decree passed by the Civil Court granting arrears of rent and future rent would survive in spite of the notification including the area within the purview of the Rent Control Act. That question was answered by the Second Appellate Court thus:

> "5. Learned counsel for the defendant Sri.K.C.John submitted that even while entertaining a claim for recovery of arrears of rent, the civil court may have to decide the existence or otherwise of the relationship of landlord and tenant. When a dispute of such a nature is raised by the tenant, the bar recognised by the Supreme Court and re-affirmed by the Full Bench of this court, would take in the ouster of jurisdiction even as regards the consideration of the existence or otherwise of the relationship, for the purpose of granting or refusing a decree for arrears of rent to the plaintiff. All that the decisions referred to above have stated, is that, in a case where a suit is filed against the tenant of a building who is protected by the Rent Control Statute, the civil court cannot grant a decree for eviction since the jurisdiction of the court is impliedly barred. I do not see anything in the said decisions which interferes with or precludes a civil court from exercising its jurisdiction in a claim for arrears of rent by a landlord against a tenant protected by the Act. A dispute of a civil nature between a landlord and a tenant or a claim on the basis of the existence of such a relationship, so long as it is

> not specifically covered by the Act, is still within the jurisdiction of a civil court. A right to recover rent on the basis of an agreement is a right founded on contract and is available at common law and is not a right conferred by the special enactment, namely, the Kerala Buildings (Lease and Rent Control) Act. Unless a statute confers a special right and provides a specific remedy under the statute to enforce that right, that too, through a machinery provided by that statute, it cannot be held that the jurisdiction of the civil court to entertain a suit is in any way barred. This principle has been well recognised ever since the decision in Wolver Hamption New Water Works Co. v. Hawkesford (1859) 6 C.B.(NS) 366). Viewed in that light, it is clear that the jurisdiction of the civil court to entertain a claim for recovery of arrears of rent in respect of a building and to pass a decree in that behalf is not in any way affected by the extension of the Kerala Buildings (Lease and Rent Control) Act. I therefore find that the decree for arrears of rent passed by the courts below is one well within their jurisdiction and the finding rendered in that behalf are valid and binding on the parties and the extension of the Act pending the Second Appeal does not in any way render that decree void."

3. Even before the disposal of the Second Appeal, the respondent herein filed R.C.P.No.1 of 1993 against the revision petitioner under Sections 11(2)(b), 11(3) and 11(4)(ii) of the Rent Control Act. The Rent Control Court, by the order dated 31.8.1995, allowed the application in part and granted an order of eviction under Sections 11(2)(b) and 11(3) of the Rent Control Act. The order of the Rent Control Court was challenged in R.C.A.No.11 of 1996. That appeal was dismissed. The tenant (revision petitioner herein)

challenged the appellate order in C.R.P.No.2074 of 1999. The Revision was also dismissed as per the judgment reported in **Sathyaseelan** v. **Madhavan** (2002 (1) KLT 913).

4. After the Rent Control Court passed the order on 31.8.1995, the landlord (respondent herein) had filed E.P.No.4 of 1996 for execution of the order of the Rent Control Court. That Execution Petition was filed on 9.1.1996. After the tenant filed an appeal as R.C.A.No.11 of 1996, as per order dated 6.2.1996, the Appellate Court stayed the execution of the Rent Control Court's order on condition of the tenant depositing the entire arrears of rent. The revision petitioner/tenant deposited some amounts as per the order of the Appellate Court. There was dispute as to the amounts to be deposited as arrears of rent in compliance with the stay order passed by the Rent Control Appellate Authority. As per order dated 25.7.1996 in E.A.No.176 of 1996 in E.P.No.4 of 1996 in R.C.O.P.No.1 of 1993 (Exhibit A1), the Munsiff's Court, Kottarakkara found that the tenant has to pay a balance amount of Rs.8,997/- and that out of that he had already deposited Rs.7,768/-. The balance amount of Rs.1,129/- was held to be payable to the landlord in compliance with the order of stay granted by the Rent Control Appellate Authority.

5. After the disposal of C.R.P.No.2074 of 1999, the order of the Rent Control Court was put in execution and delivery was effected on 10.10.2002.

6. The landlord/respondent thereafter put in execution the decree in O.S.No.179 of 1986 by filing E.P.No.135 of 2002. In that Execution Petition, he claimed that as per the terms of the decree the tenant had to pay the arrears of rent from 15.2.1996 to 10.10.2002, the date of delivery.

7. The tenant (revision petitioner) contested E.P.No.135 of 2002 and contended that the amount claimed in the Execution Petition is not correct and the amounts so claimed is contrary to the terms of the decree passed by the civil court in O.S.No.179 of 1986. Both parties filed calculation statement in the Execution Petition. As per the calculation statement filed by the decree holder, rent was due from 9.1.1996 to 10.10.2002 and, therefore, the judgment debtor (revision petitioner) had to pay a balance amount of Rs.10,125/-. As per the calculation statement made by the judgment debtor, he has to pay only the balance amount of Rs.2,628/-. The Executing Court found

that the calculation made by the decree holder is correct and accordingly held that the judgment debtor is liable to pay the amounts as referred to in paragraph-1 above.

8. The decreetal portion of the judgment in O.S.No.179/1986 reads as follows:

> "In the result, the suit is decreed against the defendant and his assets as follows:-
>
> 1. The plaintiff is entitled to get eviction of the defendant from the plaint schedule property and the building situated therein, through process of this court, as prayed for.
>
> 2. The plaintiff is entitled to realise Rs. 450/= as arrears of rent with interest at the rate of 12% per annum from the date of suit till the date of decree and at 6% from the date of decree till the date of realisation.
>
> 3. The defendant is directed to give vacate possession of the plaint schedule property within 3 months from the date of this order.
>
> 4. If the defendant fails to vacate the building within the time specified, the plaintiff is entitled to realise future rent at the rate of Rs.100/= per month with interest at the rate of 6% per annum from the date of suit till the date of realisation.
>
> 5. In the circumstances, parties are directed to suffer their respective costs. "

9. It is not disputed that the defendant failed to give vacant possession within three months from the date of the judgment.

Therefore, the defendant has to pay rent at the rate of Rs.100/= per month with interest at the rate of 6% per annum from the date of suit till the date of realisation will be payable. The revision petitioner has no objection in paying whatever amount due as per the terms of the decree in O.S.No.179/1986. The decree is in Malayalam and the decreetal portion of the judgment is reproduced in the decree. As per the decree, in case of failure of the defendant to vacate within three months, rent is payable at Rs.100/= per month and the expression used is " ". It only means from the date of suit as mentioned in the decreetal portion of the judgment.

10. Though the respondent raised a contention before the court below that calculation should be made on the basis of the amount which was found due as per Ext.A1, the learned counsel for the respondent submits that the respondent has no objection in calculating the amount due as per the terms of the decree in O.S.No.179/1986. If that be so, it is a question of calculation of the correct amount. The learned counsel for the respondent submits that in the calculation statement submitted by the revision petitioner before the court below, there is omission to

include the rent payable from 3.6.1986 to 20.7.1998 and consequently, there is difference in the calculation of interest as well. The counsel for the judgment debtor submits that the judgment debtor was carried away by the expression " " in the decree and he took that rent at the rate of Rs.100/= need be paid only from the date of expiry of three months after the decree passed by the trial court in O.S.No.179/1986. Now that, the matters are clear. It is a question of calculation to find out the correct amount payable. Both the parties shall file calculation statement before the court below and the court below shall arrive at the correct amount which is payable by the judgment debtor.

For the aforesaid reasons, the order impugned is set aside and the Civil Revision Petition is allowed. The executing court shall permit both the parties to file calculation statements. The executing court shall find out what is the balance amount payable by the judgment debtor as per the terms of the judgment and the decree in O.S.No.179/1986, which are extracted above. The executing court shall dispose of the matter as expeditiously as possible, since the suit is of the year 1986 and the execution

petition is of the year 2002. No order as to costs. The parties shall appear before the court below on 10th January, 2008.

K.T. SANKARAN, JUDGE.

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